

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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In The Matter of)
)
Reorganization and Revision)
Parts 1, 2, 21 and 94 of the)
Rules to Establish a New Part 101)
Governing Terrestrial Microwave)
Fixed Radio Service)

WT Docket No. 94-148

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS
OF
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

METROPOLITAN WATER DISTRICT OF
SOUTHERN CALIFORNIA

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SUMMARY

Metropolitan supports the premise of this proceeding, and agrees that the microwave industry would benefit from a comprehensive set of rules. While Metropolitan appreciates the Commission's efforts to streamline the private operational-fixed microwave and the point-to-point microwave rules to ease the regulatory burden on licensees, it recommends other amendments to the proposed Part 101 rules to further simplify the existing Part 21 and Part 94 microwave rules. Metropolitan believes its recommendations are consistent with the goals of this proceeding. The recommendations foster efficient use of the microwave spectrum, eliminate onerous regulatory filing requirements, and promote equitable treatment between Part 21 and Part 94 microwave licensees. Specifically, Metropolitan recommends that the Commission: (1) allow Part 94 licensees to lease reserve capacity to common carriers, (2) allow both common carrier and non-common carrier use and licensing of Part 21 microwave transmitters; (3) extend the 21-day minor modification rule to Part 94 licensees; and (4) extend the BSTA policy to Part 94 licensees.

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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Metropolitan Water District of Southern California ("Metropolitan"), through its undersigned counsel and pursuant to Section 1.415 of the Federal Communications Commission's rules, submits the following Comments on the above-captioned Notice of Proposed Rule Making ("NPRM").^{1/}

I. BACKGROUND

1. Metropolitan transports over two and a half billion gallons of water a day and ranks as one of the world's largest water agencies. Geographically, its operations range from urban downtown Los Angeles to

^{1/} Notice of Proposed Rule Making, 60 Fed. Reg. 2722 (January 11, 1995); Order, DA95-140, Extending the Comment date to February 17, 1995 and Reply Comment date to March 17, 1995 (February 2, 1995).

extremely rural desert areas around Death Valley. The water imported by Metropolitan from the Colorado River and the California State Water Project makes up almost half of all the water used by 15 million consumers in Southern California. This imported water is wholesaled to 27 member public agencies, which work with 130 sub-agencies to retail the water to homes, businesses, and farms in a 5,200 square mile service area.

2. Southern California's notoriously dry climate makes Metropolitan's service an extremely crucial one. The area's population, which includes both thriving urban centers, such as Los Angeles and San Diego, as well as rural desert communities, would be unable to survive without Metropolitan's water deliveries.

3. Metropolitan relies heavily on VHF and UHF land mobile communications systems to safely, efficiently and reliably provide Southern California with water. To support its internal communications among maintenance and repair crews throughout rural and urban Southern California, Metropolitan also relies on critical private operational-fixed microwave service licensed under Part 94.

4. Metropolitan's Part 94 microwave system communications are used in the coordination, transportation and use of hazardous materials at six treatment plants in the Los Angeles basin. These hazardous materials, such as chlorine and caustic sodas, are necessary to treat the enormous amount of water handled by Metropolitan. The Department of Transportation, pursuant to federal legislation, has determined that these materials, in their undiluted form, require strict supervision in their use and transport.^{2/} Metropolitan's operational-fixed microwave system is a crucial part of the overall efforts Metropolitan employs to accomplish this safety goal. This communications system also is used to administer critical clean up work in the event of a chemical spill.

5. In the instant proceeding, the Commission proposes to consolidate into a new Part 101 both the rules for common carrier point-to-point and the rules for private operational-fixed microwave services, currently contained in Parts 21 and 94 of the Commission's rules, respectively. The proposed Part 101 rules contain very few substantive rule changes. Nevertheless, the Commission encourages recommendations for substantive amendments to the collective

^{2/} See 49 C.F.R. Parts 171-179.

microwave rules.^{3/} In light of this opportunity, Metropolitan is submitting the following Comments for consideration in this proceeding.

II. COMMENTS

6. Metropolitan generally supports the Commission's efforts to consolidate the existing common carrier and private operational-fixed microwave rules. It agrees that there already is commonality of the rules and that the industry is moving to create common standards and coordination procedures. Metropolitan supports further consolidation of the rules, as recommended herein, because the two microwave services also share virtually the same frequency bands, with the exception of the 2 GHz band, and adhere to similar technical and operational rules. Finally, Metropolitan believes that these services should be treated similarly, where possible, to create an even more streamlined set of regulations.

^{3/} NPRM at ¶ 7.

A. Private Operational-Fixed Microwave Licensees
Should Be Allowed to Lease Reserve Capacity to
Common Carrier Licensees

7. In the NPRM, the Commission has proposed to retain existing Section 94.17, which governs the shared use of radio stations and the offering of private carrier service, in proposed Section 101.135. Section 101.135 merely restates the limitations of Section 94.17 in that it maintains the eligibility restrictions regarding shared use of private operational-fixed microwave facilities.

8. Metropolitan believes this NPRM is an opportune time to eliminate any restriction that would preclude private operational-fixed microwave licensees from leasing reserve capacity to common carrier entities for their customer traffic. As the Commission may be aware, private operational-fixed microwave licensees often have reserve bandwidth capacity on their microwave links. Improvements in transmission techniques and transmission rates have created substantial efficiency in private operational-fixed microwave spectrum use, resulting in microwave spectrum that may be available for shared use. However, Part 94 licensees often are unable to find other eligible users to share their reserve microwave capacity, and their reserve spectrum must remain fallow. Yet, there are common carrier entities who

might be willing to lease this reserve capacity but for the prohibition in the existing Part 94 rules.

9. The Commission has stated that one of its goals of this proceeding is to "encourage more efficient use of the microwave spectrum."^{4/} Accordingly, Metropolitan contends it is in the public interest to allow Part 94 microwave licensees to lease reserve capacity to common carriers for their customer traffic, rather than continuing to allow these systems to remain underutilized. The Commission should follow its mandate and encourage efficient use of the microwave spectrum by eliminating the eligibility and permissible use limitations set forth in proposed Section 101.135.

10. Moreover, Metropolitan contends that allowing private operational-fixed microwave licensees to lease reserve capacity to common carriers for their customer traffic does not make the service common carrier. Rather, the offering is a private one to a customer who happens to be a common carrier; the Part 94 licensee still retains the discretion to refuse a customer's request for service, and

^{4/} NPRM at ¶ 7.

is discriminating in service contract lengths and rates.^{5/} Consequently, the underlying intent of Sections 94.9 and proposed Section 101.603(b)(1) is not undermined -- the Part 94 service offering remains private. Metropolitan recommends deletion of subsection (b)(1) of the proposed rule as well as deletion of any other language regarding eligibility limitations.

B. The Commission Should Allow Common Carrier and Non-Common Carrier Use and Licensing of Microwave Transmitters

11. In the NPRM, the Commission proposes to retain existing Section 21.119, which prohibits the licensing or use of common carrier microwave transmitters for non-common carrier purposes, in proposed Section 101.113. As alluded to above, there is no benefit in retaining such a rule as there is virtually no distinction in frequency allocation for all point-to-point microwave services. Accordingly, this rule does not preserve any allocation of frequencies to a particular service. The frequencies are fungible and are licensed on a first-come/first-served basis by eligibles in either service. Further, as discussed above, the technological advances made in microwave equipment have led

^{5/} Nat'l Ass'n of Regulatory Utility Comm'rs v. FCC, 525 F.2d 630, 641 (D.C. Cir. 1976).

to an increase in available spectrum capacity. With new microwave equipment, there is no real need to dedicate transmitters on a full-time basis to a particular service.

12. The Commission is quite familiar with the concept of "dual licensing" since it currently allows forms of dual licensing in at least two other instances. First, in the mobile radio service, the same transmitter can be licensed to different entities as Section 90.185 permits multiple licensing of radio transmitting equipment. (The private operational-fixed microwave service also allows multiple licensees to use the same transmitter.) Second, also in the mobile radio service, the Commission recently stated its preference to issue a single license to mobile service providers offering both commercial and private services on the same frequency.^{6/} In this dual licensing scenario, the same transmitter can be licensed for dual uses.

13. It is arguable that the goals of proposed Section 101.133 are no longer appropriate. In fact, the Commission eliminated a similar rule when rewriting Part 22,

^{6/} In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GEN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, ¶ 115 (1994).

its Public Mobile Service rules. In that proceeding, the Commission indicated:

Advances in technology, such as improved digital transmission techniques and store-and-forward technology, have resulted in dramatically increased capacity, thus reducing the need for a transmitter to be devoted on a full-time basis to common carrier uses. Second, licensees providing wide-area service could achieve substantial economies of scale by sharing transmitters when building a regional or nationwide system without diminishing the licensee's quality of service. . . . Lastly, increased competition in the industry provides an assurance that service to existing customers will not suffer from joint use of transmitters when the carriers are offering distinct services on different channels.^{7/}

For many of the same reasons that caused the Commission to eliminate Section 22.119, Metropolitan believes the Commission should now eliminate this similar rule section for Part 21 microwave systems. Accordingly, Metropolitan recommends the removal of Section 101.133 from the proposed rules.

^{7/} In the Matter of Revision of Part 22 of the Commission's Rules Governing the Public Mobile Service, Amendment of Part 22 of the Commission's Rules to Delete Section 22.119 and Permit Concurrent Use of Transmitters in Common Carrier and Non-Common Carrier Service, CC Docket No. 92-115, CC Docket No. 94-46, 9 FCC Rcd 6513 (1994).

C. The Commission Should Extend the 21-Day Minor Modification Rule to Private Operational-Fixed Licensees

14. In Section 101.59, the Commission proposes to incorporate Section 21.41 of the point-to-point common carrier rules which states that certain applications seeking modification of microwave facilities will be deemed licensed on the 21st day following the date of public notice. However, the Commission does not propose to extend this rule to Part 94 licensees. Metropolitan believes that this provision should be extended to Part 94 licensees.

15. Since the Commission already is proposing to apply many Part 21 licensing and application procedures to Part 94, it seems inequitable not to extend favorable Part 21 licensing policies to private operational-fixed licensees. Moreover, proposed Part 101 will consolidate the rules which distinguish between major and minor modifications, and, as a result, both services generally will adhere to the same licensing procedures regarding license modifications. Part 94 licensees should not be disadvantaged and should be allowed to consider their minor modification applications authorized on the 21st day following the date of public notice. Metropolitan requests the Commission insert the term "private operational-fixed

microwave" in the list of services set forth in proposed Section 101.59(b)(1).^{8/}

D. The Commission Should Extend the Blanket Special Temporary Authority to Private Operational-Fixed Microwave Licensees

16. Finally, Metropolitan seeks extension of the Blanket Special Temporary Authority ("BSTA") policy to Part 94 applicants. Although this policy is not codified under any Part 21 rules, the Commission's Microwave Branch in Gettysburg has issued a public notice establishing this new STA policy. The policy allows Part 21 licensees, when issued a BSTA, to begin construction and operation of microwave facilities once the underlying application appears on public notice as accepted for filing, thus alleviating the need to file a separate STA request. Unfortunately, this policy does not apply to Part 94 applicants. As the NPRM strives to save both the applicant and the Commission valuable time and resources, the Commission should extend this noteworthy policy to Part 94 licensees. With nearly identical licensing procedures in the microwave services, and the proposal for a joint rule part, it is inequitable to extend such favorable operating authority to one microwave service over another. Accordingly, Metropolitan seeks

^{8/} NPRM, Appendix A, p. 60.

issuance of a separate public notice extending the BSTA authority to Part 94 licensees.

CONCLUSION

17. Metropolitan supports the Commission's efforts to streamline the existing Part 21 and Part 94 microwave rules and believes that this NPRM is a step in the right direction to reduce unnecessary regulations. The recommendations espoused herein by Metropolitan merely foster these goals, and specifically help to efficiently and effectively use the microwave spectrum. More importantly, they create an equitable operating environment for both common carrier and private carrier microwave licensees without jeopardizing the fundamental rules of the separate service. Accordingly, Metropolitan seeks adoption of the NPRM as proposed with the following modifications: (1) the Commission should amend proposed Section 101.35 to allow Part 94 microwave licensees to lease reserve capacity to common carriers; (2) the Commission should delete proposed Section 101.33; (3) the Commission should apply proposed Section 101.59(b)(1) to Part 94 licensees to permit their minor modification applications to be deemed authorized on the 21st day following public notice; and (4) the Commission should

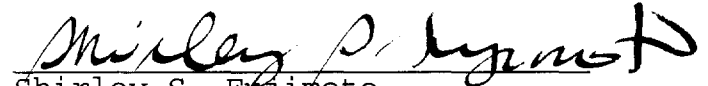
extend the Blanket Special Temporary Authority policy to Part 94 licensees.

WHEREFORE, THE PREMISES CONSIDERED, Metropolitan Water District of Southern California respectfully requests that the Commission act upon its Notice of Proposed Rule Making in a manner consistent with the views expressed herein.

Respectfully submitted,

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SOUTHERN CALIFORNIA**

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